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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,344

04/15/2004

Edward B. Rinker

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OAKLAND, CA 94623-1305

EXAMINER

AKRAM, IMRAN

ART UNIT

PAPER NUMBER

1709

MAIL DATE

DELIVERY MODE

08/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/825,344

Applicant(s)

RINKER ET AL.

Examiner

Imran Akram

Art Unit

1709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 22-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :4/15/04, 9/2/05, 2/27/06, 5/26/07:

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-21, drawn to a system for enhancing water, classified in class 210, subclass 209.
  - II. Claims 22-28, drawn to a water enhancement device, classified in class 210, subclass 416.1.
  - III. Claims 29-38, drawn to an enhancement module, classified in class 210, subclass 201.
  - IV. Claims 39-46, drawn to a method of mixing, classified in class 210, subclass 649.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the use of activated carbon. The subcombination has separate utility such as filtering and enhancing water.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are

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subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination (group III) discloses a reservoir, an attachment portion, a consumer control, and a dispensing unit while the combination (group I) does not. The subcombination has separate utility such as adding enhancements without a filtration system.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or

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includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. Inventions I and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus or by hand: for example, a filter with no enhancement module where enhancement is performed by hand.

5. Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination (group III) discloses a reservoir, an attachment portion, a consumer control, and a dispensing unit while the combination (group II) does not. The subcombination has separate utility such as adding enhancements without a filtration system.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all

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the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

6. Inventions II and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus or by hand: for example, a filter with no enhancement module where enhancement is performed by hand.

7. Inventions III and IV are directed to an unrelated product and process. Product and process inventions are unrelated if it can be shown that the product cannot be used in, or made by, the process. See MPEP § 802.01 and § 806.06. In the instant case, the process cannot be performed with the apparatus.

8. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

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- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after



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the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

9. During a telephone conversation with Tom Feix on 7/25/07 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 22-46 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-4, 9, 11, 13-15, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Sizelove (US 2003/0042201 A1).

13. Regarding claims 1, 13-15, 18, and 19, Sizelove discloses a system for enhancing water, comprising: a housing **105** having an inlet **125** and an outlet **37**; source water **15** capable of being in fluid communication with the inlet; a filter component within the housing, the filter component containing water treatment material **100**, and the filter component capable of having fluid communication with the inlet; a fluid path within the water treatment material wherein the source water can flow along the fluid path and be treated by the water treatment material, thereby converting the source water to treated water, the treated water capable of being in fluid communication with the outlet (paragraph 8); and a first enhancement module adjacent the outlet and capable of dispensing a first enhancement into the outlet, thereby converting the treated water to enhanced water as the treated water flows through the outlet (paragraph 10).

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Water flow in the system is driven solely by a force selected from the group consisting of gravity, pressure from a source water line, and combination thereof: the water supply **15** provides pressure through the system in addition to gravity's influence. Sizelove discloses pressures of less than 100 psi throughout the system (paragraph 55).

14. Regarding claim 2, Sizelove discloses a faucet system **15**.

15. Regarding claim 4, Sizelove discloses carbon (paragraph 31), carbonized synthetic materials (paragraph 41), hydrophobic (paragraph 35) and polymeric materials (paragraph 33).

16. Regarding claim 9, Sizelove discloses an enhancement consisting of vitamins, minerals, and/or various pharmaceutical products (see abstract) and nutritional supplements (paragraph 52).

17. Regarding claim 11, Sizelove discloses one or more enhancement modules (paragraph 24).

18. Claims 1, 3, 4, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kagan (US 5,922,378).

19. Regarding claim 1, Kagan discloses a system for enhancing water, comprising: a housing **38** having an inlet **10** and an outlet (see figure 2); source water **12** capable of being in fluid communication with the inlet; a filter component within the housing, the filter component containing water treatment material **24**, and the filter component capable of having fluid communication with the inlet; a fluid path within the water treatment material wherein the source water can flow along the fluid path and be treated by the water treatment material, thereby converting the source water to treated water,

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the treated water capable of being in fluid communication with the outlet (column 4, lines 1-10); and a first enhancement module adjacent the outlet and capable of dispensing a first enhancement into the outlet, thereby converting the treated water to enhanced water as the treated water flows through the outlet (column 4, lines 25-36). Water flow in the system is driven solely by a force selected from the group consisting of gravity, pressure from a source water line, and combination thereof.

20. Regarding claims 3 and 4, Kagan discloses pitcher **16** and activated carbon (column 1, lines 31-33).

21. Regarding claims 9 and 10, Kagan discloses the enhancement modules adding vitamins and minerals through consumer control (column 3, lines 18-32).

22. Claims 1-7, 9, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Nohren (US 6,569,329 B1).

23. Regarding claims 1 and 15, Nohren discloses a system for enhancing water, comprising: a housing **33** having an inlet **37** and an outlet **2**; source water capable of being in fluid communication with the inlet; a filter component **34** within the housing, the filter component containing water treatment material, and the filter component capable of having fluid communication with the inlet; a fluid path **38** within the water treatment material wherein the source water can flow along the fluid path and be treated by the water treatment material, thereby converting the source water to treated water, the treated water capable of being in fluid communication with the outlet and a first enhancement module **40** adjacent the outlet and capable of dispensing a first enhancement into the outlet, thereby converting the treated water to enhanced water as

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the treated water flows through the outlet. Water flow in the system is driven solely by a force selected from the group consisting of gravity, a hand pump, and combination thereof. The bottle can be turned upside and/or squeezed to jettison the water.

24. Regarding claim 2, Nohren discloses the filter using a faucet (see figure 18).

25. Regarding claim 3, Nohren discloses the use of the filter for water bottles (see abstract).

26. Regarding claim 4, Nohren discloses the use of activated carbon for the water treatment device (column 4, lines 20-24).

27. Regarding claims 5 and 16, Nohren discloses a valve **41** preventing enhanced water from flowing from the outlet toward the filter component.

28. Regarding claims 6 and 17, Nohren discloses a mixing chamber **42**.

29. Regarding claim 7, Nohren discloses a "helix" **43** is used as an agitation tool to improve mixing.

30. Regarding claim 9, Nohren discloses the use of flavoring, vitamin, mineral or medication as additives (column 6, lines 38-42).

### ***Claim Rejections - 35 USC § 103***

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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32. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

33. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

34. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kagan, Sizelove, or Nohren.

35. While all three of these references teach the use of activated carbon as a water treatment material, they do not specifically disclose carbonized synthetic materials, hydrophobic polymeric adsorbents, activated alumina, activated bauxite, fuller's earth, diatomaceous earth, silica gel, calcium sulfate, zeolite particles, inert particles, sand, surface charge-modified particles, ceramic particles, metal oxides, metal hydroxides, and combinations thereof. It would have been obvious to one having ordinary skill in the

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art at the time the invention was made to use any known filtering material in Kagan, Sizelove, or Nohren that was appropriate for the material to be filtered. This is simple substitution of one known, equivalent element for another to obtain predictable results.

36. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nohren as applied to claim 7 above, and further in view of Corder (US 4,172,796).

37. Nohren discloses mixing means, but not a baffle. Corder discloses a baffle (column 5, lines 50-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a baffle in Nohren to cause more thorough mixing in the mixer chambers of the treated water and enhanced water. A homogeneous mixture is attempted in Nohren with a "helix" mixer and baffles, rotors, screws, and augers are all well known mechanisms for mixing.

38. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kagan, Sizelove, or Nohren.

39. While all three references disclose additives such as vitamins, minerals, flavoring, and medicines, they do not specifically disclose the use of dyes, herbal supplements, phytonutrients, probiotics, homeopathic remedies, amino acids, enzymes, hormones, standard prescription medications, over-the-counter medications, and combinations thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any known enhancement agent in Kagan, Sizelove, or Nohren for the outcome desired. This is simple substitution of one known, equivalent element for another to obtain predictable results.

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40. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sizelove as applied to claim 11 above, and further in view of Kagan.

41. Sizelove disclose the use of more than one enhancement module, but not enhancement control. Kagan discloses enhancement control for an enhancement module (column 3, lines 18-32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add this additive control to the second module as well to achieve the same result of controlled enhancement.

42. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nohren in view of Sizelove.

43. Regarding claims 18 and 19, Nohren discloses a system for enhancing water, comprising: a housing **33** having an inlet **37** and an outlet **2**; source water capable of being in fluid communication with the inlet; a filter component **34** within the housing, the filter component containing water treatment material, and the filter component capable of having fluid communication with the inlet; a fluid path **38** within the water treatment material wherein the source water can flow along the fluid path and be treated by the water treatment material, thereby converting the source water to treated water, the treated water capable of being in fluid communication with the outlet and a first enhancement module **40** adjacent the outlet and capable of dispensing a first enhancement into the outlet, thereby converting the treated water to enhanced water as the treated water flows through the outlet. Nohren does not disclose, however, the pressure being maintained at less than 100 psi. Sizelove discloses pressures of less than 100 psi throughout the system (paragraph 55). It would have been obvious to one



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having ordinary skill in the art at the time the invention was made to use any reasonable pressure in the art. 100 psi is reasonable according to Sizelove for this art.

44. Regarding claim 20, Nohren discloses a valve **41** preventing enhanced water from flowing from the outlet toward the filter component.

45. Regarding claim 21, Nohren discloses a mixing chamber **42**.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Imran Akram whose telephone number is 571-270-3241. The examiner can normally be reached on 8-6 Monday through Thursday.

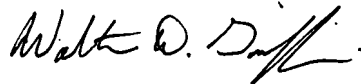
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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IA

A handwritten signature in black ink, appearing to read "Walter D. Griffin". The signature is fluid and cursive, with a prominent initial "W" and a stylized "G".

WALTER D. GRIFFIN  
SUPERVISORY PATENT EXAMINER